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IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH,	:	
Plaintiff-Appellant,	:	
-v-	:	Case No. 16087
WILLIAM L. HUTCHINSON,	:	
Defendant-Respondent.	:	

BRIEF OF RESPONDENT

Appeal from the Third Judicial District Court
Salt Lake County, State of Utah
Honorable David K. Winder, Judge

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TABLE OF CONTENTS

	Page
STATEMENT OF THE NATURE OF THE CASE	1
DISPOSITION IN THE COURT BELOW	1
RELIEF SOUGHT ON APPEAL	2
STATEMENT OF FACTS	2
ARGUMENT	
POINT I THE STATE OF UTAH HAS PREEMPTED THE ENTIRE FIELD OF REGULATION IN MATTERS INVOLVING ELECTIONS	3
POINT II SALT LAKE COUNTY HAS NO CONSTI- TUTIONAL OR STATUTORY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO PASS SECTIONS 1-10-4 AND 1-10-8 OF THE REVISED ORDINANCES OF SALT LAKE COUNTY	9
POINT III SALT LAKE COUNTY ORDINANCE 1-10-1, ET SEQ., ARE IN VIOLA- TION OF ARTICLE I, SECTION 24 AND ARTICLE XI, SECTION 4 OF THE UTAH CONSTITUTION	16
CONCLUSION :	18

CASES CITED

	Page
<u>American Fork City v. Robinson</u> , 77 Utah 168, 292 P. 249 (1930)	11
<u>Carbon County v. Hamilton</u> , 48 Utah 503, 160 P. 765 (1916)	10
<u>Cottonwood City Electors v. Salt Lake County Board of Commissioners</u> , 28 Utah 2d 121, 499 P.2d 270 (1972)	9,10,13
<u>Hansen v. Public Employee Retirement Systems Board of Administration</u> , 246 P.2d 591, 599 (Utah 1952)	10
<u>Layton City v. Speth</u> , 578 P.2d 828 (1973)	11,13,14,15
<u>Nance v. Mayflower Tavern</u> , 150 P.2d 773 (Utah 1944)	12,13,16
<u>Nesfell v. Ogden City</u> , 249 P.2d 507, 508 (1952)	11
<u>Parker v. Provo City Corp.</u> , 543 P.2d 769 (Utah 1975)	12,36,16
<u>Ritholz v. City of Salt Lake</u> , 3 Utah 2d 385, 284 P.2d 702 (1955)	11,13,14
<u>Salt Lake City v. Allred</u> , 19 Utah 2d 254, 430 P.2d 371 (1967)	8,11,15
<u>Salt Lake City v. Kusse</u> , 93 P.2d 671 (Utah 1938)	8,15
<u>Salt Lake City v. Sutter</u> , 61 Utah 533, 216 P. 234 (1923)	11,12
<u>Salt Lake County v. Liquor Control Comm'n.</u> , 11 Utah 2d 235, 357 P.2d 488, 489 (1960)	10
<u>Stephenson v. Salt Lake City Corp.</u> , 7 Utah 2d 28, 317 P.2d 597 (1957)	11
<u>Utah Rapid Transit Co. v. Ogden City</u> , 58 P.2d 1 (Utah 1936)	12,13,16
<u>Wadsworth v. Santaquin City</u> , 28 P.2d 161 (1933)	11

STATUTES CITED

	Page
Utah Code Ann. § 17-5-18 (1953)	4
Utah Code Ann. § 17-5-35 (1953)	12
Utah Code Ann. § 17-5-77 (1953)	14
Utah Code Ann. § 20-13-1 (1953)	5
Utah Code Ann. § 20-13-2 (1953)	5

CONSTITUTION

Utah Const. art I, § 24	16,17
Utah Const. art. XI, § 4	16,17

IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH,	:	
Plaintiff-Appellant,	:	
-v-	:	Case No. 16087
WILLIAM L. HUTCHINSON,	:	
Defendant-Respondent.	:	

BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

The State of Utah, appellant herein, appeals from a judgment of the District Court, Third Judicial District, the Honorable David K. Winder presiding, which affirmed on appeal a ruling of the City Court of Salt Lake City wherein Sections 1-10-4 and 1-10-8 Revised Ordinances of Salt Lake County (ROSLCO) were declared unconstitutional and void.

DISPOSITION IN THE COURT BELOW

This matter came before the district court upon the State's appeal of the city court ruling referred to above pursuant to the authority of Section 78-4-17(6) Utah Code Annotated (1953). The district court, in a memorandum decision, affirmed the ruling of the city court (TR 49-50), finding

Sections 1-10-4 and 1-10-8 of the ROSLCO unconstitutional and void.

RELIEF SOUGHT ON APPEAL

The respondent seeks affirmance of the judgment of the district court and a ruling that Sections 1-10-4 and 1-10-8 of the ROSLCO are unconstitutional and void.

STATEMENT OF FACTS

In February of 1978, the respondent, Salt Lake County Commissioner William L. Hutchinson, was charged with two counts of Failure to File Campaign Statements, in violation of Sections 1-10-4 and 1-10-8 of the ROSLCO. The respondent filed a motion to dismiss the complaint on the grounds that Salt Lake County was without authority to pass said ordinances. The matter came before the city court on April 11, 1978, with the Honorable Melvin Morris presiding. After hearing arguments from both parties, Judge Morris ruled that Salt Lake County was without constitutional or statutory authority to pass Sections 1-10-4 and 1-10-8 of the ROSLCO, and therefore that said ordinances were void, and the complaint was dismissed. The State of Utah filed its notice of appeal to the district court on the 26th of April, 1978. On the 15th of September, 1978, the district court, the Honorable David K. Winder presiding, entered its memorandum decision affirming the city court's judgment, finding Sections 1-10-4 and 1-10-8 of the ROSLCO unconstitutional and void.

ARGUMENT

POINT I

THE STATE OF UTAH HAS PREEMPTED THE ENTIRE FIELD OF REGULATION IN MATTERS INVOLVING ELECTIONS.

In Title 20 of Utah Code Annotated (1953), as amended, denoted "Elections," the State has expressly preempted the regulation of all elections for public office in the following relevant particulars: the control of general elections (including all county elections) at Utah Code Annotated, Section 20-1-2; the regulation of county conventions at Utah Code Annotated, Section 20-3-2(2); the selection of nominees for county offices at Utah Code Annotated, Section 20-4-7; the regulation of county election returns at Utah Code Annotated, Section 20-8-9.5; a broad range of election offenses (applicable to county elections) at Utah Code Annotated, Section 20-13-1, et seq.; and the regulation of election contests (encompassing county elections) at Utah Code Annotated, Section 20-5-1, et seq.

In addition, the State has enacted legislation dealing exclusively with the election of county commissioners: the number of county commissioners at Utah Code Annotated, Section 17-5-1; the eligibility and election of candidates for county commissioner at Utah Code Annotated, Section 17-5-2; and the term of office for county commissioners at Utah Code Annotated, Section 17-5-3.

The State's only delegation of authority to counties with respect to elections can be found in Section 17-5-18:

17-5-18. [Election districts]-- They may establish, abolish and change election districts, appoint inspectors and judges of election, canvass all election returns, except as otherwise provided by law, may declare the result, order the county clerk to issue certificates of elections, and shall perform such other duties in relation to elections as are or may be prescribed by law. They shall alter or divide election districts whenever necessary in such manner that each election district shall contain not more than five hundred voters. No precinct or election district shall be established or abolished or the boundaries of any precinct or district altered or changed within ninety days prior to any election. (Emphasis added.)

The statutory language "shall perform such other duties in relation to elections as are or may be prescribed by law" indicates that the Legislature intended to retain in itself all authority over county elections, leaving in the county the power to perform only those duties that the Legislature expressly prescribes. In other words, the State retains complete power over elections, and the county has only those powers specifically relinquished by the State.

The county ordinances involved in the instant case are clearly outside of this statutory delegation. The State

has never expressly delegated to the counties the authority to enact ordinances regulating campaign finances in county elections, and the Salt Lake County Commission was in no manner performing duties prescribed by law.

Further evidence of the State's intention to preempt the regulation of elections can be found in Chapter 13 of Title 20 of Utah Code Annotated (1953), as amended, entitled "Election Offenses." The scope of this chapter is found in Section 20-13-20 and extends to county elections.

20-13-2. [Chapter applicable to all elections].--The provisions of this chapter shall extend so far as applicable to all elections provided by law, special, general, municipal and school elections, and to primary elections in cities of the first and the second class. (Emphasis added.)

Section 20-13-1 deals with bribery in elections:

20-13-1. [Bribery in elections].-- It shall be unlawful for any person, directly or indirectly, by himself or through any other person:

(2) To give, offer or promise any office, place or employment, or to promise or procure, or endeavor to procure, any office, place of employment, to or for any voter, or to or for any other person, in order to induce such voter to vote or refrain from voting at any election provided by law; or to induce any voter to refrain from voting at such election for any

particular person or persons; or to obtain the political support or aid of any such person or persons. (Emphasis added.)

(3) To advance or pay, or cause to be paid, any money or other valuable thing to, or for the use of, any other person with the intent that the same, or any part thereof, shall be used in bribery at any election provided by law; or to knowingly pay, or cause to be paid, any money or other valuable thing to any person in discharge or repayment of any money expended wholly or in part in bribery at any such election. (Emphasis added.)

The above statute allows the State to prosecute a broad range of corrupt practices by candidates in all elections, including the selling of favors through campaign contributions.

The appellant states in its brief that the ordinances in question were in part designed to "assure that the financial interests of candidates present no conflict with the public trust." Appellant's Brief, p. 7. A conflict with the public trust would occur only where the candidate promised employment or some other quid pro quo to the contributor in exchange for the contribution, and such conduct is subject to prosecution by the State under Section 20-13-1(2). Thus, the argument by appellant that the ordinances in question are indispensable to protect the good order, etc. of the inhabitants is rendered ineffective and without merit because the State can prosecute

candidate dishonesty through Chapter 13 of Title 20. In addition, Section 20-13-1 et seq. further exemplifies the State's intention to preempt to itself the power to control corrupt financial practices in all elections.

The appellant, ignoring the existence of Section 20-13-1 et seq., argues that the State cut back on its pre-emption in the area of election finance regulations in enacting the amended version of Section 20-14-1 et seq., Utah Code Annotated (1953), as amended. Section 20-14-1 et seq., entitled the "Corrupt Practices in Elections Act," was initially enacted in 1971 as a campaign financing disclosure statute applicable to all candidates for public office in Utah except candidates for the national offices of President and Vice President. In 1973, the Legislature amended Section 20-14-1 et seq. limiting its application to candidates for the state offices of Governor, Secretary of State/Lieutenant Governor, and Attorney General.

It is appellant's contention (Appellant's Brief, p. 9) that the 1973 amendment was intended to accomplish two things:

- (1) To limit its application to candidates for the three enumerated public offices and

- (2) To exempt all other public officials from its application.

The appellant then argues that the purpose of this amendment

was to cut back on the preempted area and thus allow local

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governments to enact their own campaign practices act.

The defendant suggests that the intent of the Legislature, in enacting the amended version of Section 20-14-1 et seq., was to exclude local government candidates from the application of the type of regulations found in Chapter 14 of Title 20 and to have the election offenses regulations of Chapter 13 solely govern the conduct of local government candidates. The State never intended to relinquish its control over county elections to the counties, it simply intended to modify its control mechanism. Therefore, since the county ordinances in question involve the type of regulations found in 20-14-1 et seq., the ordinances are in conflict with the Legislature's intent to exclude local government candidates from this type of regulatory control.

The appellant cites Salt Lake City v. Kusse, 93 P.2d 671 (Utah 1938) and Salt Lake City v. Allred, 430 P.2d 371 (Utah 1967) to support its contention that when the State has preempted an area, local governments can pass ordinances so long as they are not inconsistent with the State statutes. It should be noted, however, that in both Kusse, supra, and Allred, supra, the statutes were upheld because the State had expressly relinquished some of its preempted power to the local governments by statute through an express grant of power. There has been no express relinquishment of the State's power to control elections in the instant case, and absent some express grant of

authority from the State to the counties, the counties are powerless to act in the preempted area.

In conclusion, Salt Lake County was wholly without authority to enact the ordinances at issue in the instant case. The State has preempted the entire field of election regulation, and under Section 17-15-18 counties may only enact ordinances dealing with county elections where such ordinances are in performance of duties expressly prescribed by law. The State did not expressly relinquish its power to the counties to regulate election financing, and the ordinances in question were not expressly prescribed by law. Therefore, Sections 1-10-4 and 1-10-8 of the ROSLCO are void based on Salt Lake County's lack of authority to enact them.

POINT II

SALT LAKE COUNTY HAS NO CONSTITUTIONAL OR STATUTORY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO PASS SECTIONS 1-10-4 AND 1-10-8 OF THE REVISED ORDINANCES OF SALT LAKE COUNTY.

The origin and extent of a county's power was dealt with by the Utah Supreme Court in the case of Cottonwood City Electors v. Salt Lake County Board of Commissioners, 28 Utah 2d 121, 499 P.2d 270 (1972). There the court stated:

The county is a political subdivision of the state whose creation and whose powers and duties are derived from the constitution and statutory law. (P. 271.)

In other cases dealing with the county's relationship to the state, the Utah Supreme Court has stated that "[t]he county is a part of the state and is subject to the control of the legislature," and that a "county is but an agency of the state, subservient to it." Hansen v. Public Employee Retirement Systems Board of Administration, 246 P.2d 591, 599 (Utah 1952); Salt Lake County v. Liquor Control Commission, 11 Utah 2d 235, 357 P.2d 488, 489 (1960).

In Cottonwood City Electors, supra, the court stated further that:

[A county] has such powers as are specifically enunciated by law and those which are reasonably and necessarily implied in order to discharge those responsibilities.
(P. 271.)

The same position as that taken in Cottonwood City Electors, supra, was applied to county commissioners in Carbon County v. Hamilton, 48 Utah 503, 160 P. 765 (1916). There the court stated "that the doctrine that county commissioners can exercise such powers only as are expressly or by necessary implication conferred upon them by the statute is elementary." Id. 768.

The Utah Supreme Court has held on numerous occasions that political subdivisions can only exercise such powers as are expressly granted to them and such other implied powers that are

indispensably necessary to carry out the express powers. Salt Lake City v. Allred, 19 Utah 2d 254, 430 P.2d 371 (1967); Stephenson v. Salt Lake City Corp., 7 Utah 2d 28, 317 P.2d 597 (1957); Ritholz v. City of Salt Lake, 3 Utah 2d 385, 284 P.2d 702 (1955); American Fork City v. Robinson, 77 Utah 168, 292 P. 249 (1930); Wadsworth v. Santaquin City, 28 P.2d 161 (1933); Salt Lake City v. Sutter, 61 Utah 533, 216 P. 234 (1923).

In interpreting the extent of the power granted to the political subdivision, it is the clear and well established rule in this state that the court will strictly construe the power granted. A typical articulation of this position can be found in Ritholz v. City of Salt Lake, 3 Utah 2d 385, 284 P.2d 701 (1955). In that case the court stated:

This court has generally adhered to a policy of rather strictly limiting the extension of the powers of a city by implication. Id. 704.

The Utah Supreme Court has in no way backed away from this position. As recently as April 10, 1978, in the case of Layton City v. Speth, 578 P.2d 828 (1978), the court reiterated its prior position quoting from Nesfell v. Ogden City, 249 P.2d 507, 508 (1952) and stating that:

Grants of power to cities are strictly construed to the exclusion of implied powers not reasonably necessary in carrying

out the purposes of the express powers granted. Id. 829.

If, after strictly construing the statute, any doubt remains as to the existence of the grant of power, the court must deny the power. This was aptly stated in the case of Nance v. Mayflower Tavern, 150 P.2d 773 (Utah 1944). There the court stated:

To determine whether or not a city has the power to enact any particular ordinance the court must look to the legislative grant of power and to the Constitution of the State of Utah. If there is a reasonable doubt concerning the existence of a particular power, that doubt should be resolved against the city, and the power should be denied. Id. 774. (Emphasis added.)

This position is also supported by Parker v. Provo City Corporation, 543 P.2d 769 (Utah 1975); Utah Rapid Transit Co. v. Ogden City, 58 P.2d 1 (Utah 1936); and Salt Lake City v. Sutter, 216 P. 234 (Utah 1923).

The appellant cites as the express grant of authority to enable it to pass the ordinances in question Sections 17-5-35, Utah Code Annotated (1953) and 17-5-77, Utah Code Annotated (1953). Section 17-5-35 reads as follows:

[Police, building and sanitary regulations--Power to make.]--
They may make and enforce within the limits of the county, outside

the limits of incorporated cities and towns, all such local, police, building and sanitary regulations as are not in conflict with general laws.

This statute gives the county the express power to pass ordinances concerning police regulations, building regulations and sanitary regulations.

This statute can in no way be construed as conferring on the county the express power to regulate campaign financing. Further, it is difficult to imagine how the regulation of campaign financing could be construed to be reasonably necessary much less indispensable in carrying out police, building and sanitary regulations.

Therefore Cottonwood City Electors, supra, and the policy of strict construction found in Ritholz, supra, and Speth, supra, compels the conclusion that Section 17-5-35, Utah Code Annotated (1953) does not grant to the county any power, express or implied, to regulate campaign financing. At the very least, upon reading the above statute, it is clear that reasonable doubt exists as to whether the power has been conferred upon the county. Therefore, Nance, supra; Parker, supra; and Utah Rapid Transit, supra, would require the county's power to regulate campaign financing be denied.

The appellant also cites Section 17-5-77 as being the grant of authority enabling the county to regulate campaign

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financing. Section 17-5-77 reads as follows:

[Ordinances--Power to enact--
Penalty for violation].--The
board of county commissioners may
pass all ordinances and rules and
make all regulations, not repug-
nant to law, necessary for carry-
ing into effect or discharging
the powers and duties conferred
by this title, and such as are
necessary and proper to provide
for the safety, and preserve the
health, promote the prosperity,
improve the morals, peace and
good order, comfort and conveni-
ence of the county and the in-
habitants thereof, and for the
protection of property therein;
and may enforce obedience to such
ordinances with such fines or
penalties as the board may deem
proper; provided, that the punish-
ment of any offense shall be by
fine in any sum less than \$300
or by imprisonment not to exceed
six months, or by both such fine
and imprisonment. The board of
county commissioners may pass
ordinances to control air pollu-
tion.

The above statute cannot be construed as an express grant of power to the county to regulate campaign financing. Further, it is difficult to imagine how the regulation of campaign financing could be construed to be indispensable in providing for the health, safety, welfare, morals, and good order of the inhabitants. It should be emphasized that in interpreting the statute the court must strictly construe any attempt at extending any implied powers. Ritholz, supra, and Speth,

supra. If the implied power is not reasonably necessary to carry out the express power, then the ordinance should be voided, Speth, supra. It seems clear that the regulation of campaign financing by the county is not reasonably necessary to insure the health, safety and welfare of the inhabitants.

The appellant cites Kusse, supra, as an example for the types of ordinances that will be upheld under broad grants of power to municipalities. However, it should be pointed out that driving under the influence of alcohol is traditionally within the police powers of local governments. The ordinance in Salt Lake City v. Allred, supra, was also clearly a police power ordinance. It is difficult to understand how examples of ordinances regulating prostitution and driving under the influence as being within the police power of local governments support the notion that the power to regulate campaign financing could be reasonably implied from the "good order" clause of Section 17-5-77.

It should also be noted that Kusse, supra, the case that appellant so heavily relies on, limits the extension of implied powers to those powers indispensable to the express powers, not just merely convenient.

Even if the ordinances in question could be construed to be reasonably necessary to carry out Section 17-5-77, it is clear that reasonable doubt exists as to whether the State intended to create this power in the county. Further, the

appellant bears the burden of proof to show the power was granted. Nance, supra; Parker, supra. Therefore, Nance, supra; Parker, supra; and Utah Rapid Transit Co., supra, would require the court to deny the existence of the power and void the ordinances in question.

In conclusion, for the county to have the power to regulate campaign financing, the county's power must be (1) specific or (2) necessarily implied from and indispensable to the carrying out of the express power. The powers granted to the county by the State can be found in Title 17 of Utah Code Annotated. No section in that title authorizes the county to regulate election financing. Similarly, no provision of Title 20 entitled "Elections" allows the county to regulate election financing. Further, the regulation of election financing is not necessarily implied from or indispensable to the carrying out of any of the express powers granted to the county under Title 17 of Utah Code Annotated (1953). At the very least, reasonable doubt exists as to whether the questioned power exists. Therefore, the power should be denied and the ROSLCO 1-10-1, et seq., should be voided.

POINT III

SALT LAKE COUNTY ORDINANCE 1-10-1, ET SEQ., ARE IN VIOLATION OF ARTICLE I, SECTION 24 AND ARTICLE XI, SECTION 4 OF THE UTAH CONSTITUTION.

Article I, Section 24 states:

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[Uniform operation of laws.]
All laws of a general nature
shall have uniform operation.

Article XI, Section 4 states:

[Uniform county government.]
The Legislature shall establish
a system of County government,
which shall be uniform through-
out the State, and by general
laws shall provide for precinct
and township organizations.

The Legislature has enacted uniform statutes to control and regulate the election of public officials. Those statutes can be found in Title 20 of Utah Code Annotated (1953) and Chapters 4 and 5 of Title 17, Utah Code Annotated (1953) and are discussed more fully in Points I and II of this brief.

There could be no uniform operation and enforcement of these statutes if this court were to allow local government to obtain the power to regulate local elections. There are 29 counties and 324 cities in the State of Utah. If this court were to open the door of regulating elections to local governments, there could potentially be 453 different election statutes. This would clearly frustrate the uniform operation of Utah's general elections laws and would thus violate Article I, Section 24 of the Utah Constitution.

Elections are indispensable to the system of county government, and elections must be included as part of that

system. To allow each of the 29 counties to create their own election regulations would in effect create 29 different systems of county government throughout the State and thus frustrate the uniform system of county government. Therefore, ROSLCO 1-10-1, et seq., are in violation of Article XI, Section 4 of the Utah Constitution and should be declared void.

In conclusion, to allow each city and county to enact ordinances regulating local elections would be in violation of Article I, Section 24 and Article XI, Section 4 of the Utah Constitution. Therefore, ROSLCO 1-10-4 and 1-10-8 should be declared unconstitutional and void.

CONCLUSION

Salt Lake County was totally without power to enact the ordinances in question. The State has retained in itself all power over the regulation of campaign financing and has pre-empted the entire field of regulating elections and the conduct of candidates.

The State has not granted to the counties any expressed powers to regulate campaign financing. The regulation of campaign financing can in no way be implied as indispensable to any express power granted nor could it even be considered reasonably necessary to the carrying out of any express power granted to the counties. At the very least, there exists reasonable, even substantial, doubt as to whether or not the State

intended to create in the counties the right to control campaign financing. And the appellant has failed in meeting its burden of proof to show the power exists. Therefore, the County had no power to enact the ROSLCO 1-10-1, et seq., and said ordinances must be declared void.

To allow each of 29 counties and 324 cities to enact their own election laws would render impossible the uniform operation of the Utah statutory laws regulating election conduct and thus contrary to the requirements of Article I, Section 24. Further, to allow each of the 29 counties to create their own election laws would frustrate the constitutional requirement of uniform systems of county government and therefore violate Article XI, Section 4.

For the foregoing reasons, the respondent respectfully requests that this court declare ROSLCO 1-10-1, et seq., unconstitutional and void.

DATED this 27th day of March, 1979.

Respectfully submitted,

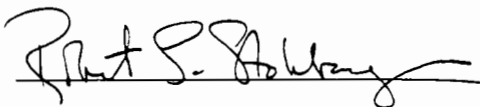


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CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing
Brief of Respondent was served on the Salt Lake County Attorney's
Office, C-220 Metropolitan Hall of Justice, Salt Lake City,
Utah 84111, this 27th day of March, 1979.

A handwritten signature in dark ink, appearing to read "Robert S. Hawley", is written over a horizontal line.